From: James Lloyd <james@calhdf.org>
Sent: Friday, April 18, 2025 12:03 PM
To: Planning Commission
Cc: Planner, Subramanian, M, Srivatsa, Niroop, Robbins, Joanne, eisberg@ci.lafayette.ca.us
Subject: public comment re item 9a for 4/21/25 Planning Commission meeting
Attachments: Lafayette - 1001-9 Oak Hill Rd - HAA Letter .pdf

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Dear Lafayette Planning Commission,

The California Housing Defense Fund ("CalHDF") submits the attached public comment regarding item 9a for the April 21, 2025 Planning Commission meeting, the proposed 90-unit housing development project at 1001, 1007, 1009, and unaddressed parcel Oak Hill Road, which includes five very low-income units and six moderate-income units.

Sincerely,

James M. Lloyd
Director of Planning and Investigations
California Housing Defense Fund
james@calhdf.org
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Apr 18, 2025

City of Lafayette
3675 Mount Diablo Blvd
Lafayette, CA 94549

Re: Proposed Housing Development Project at 1001-9 Oak Hill Road

By email: planningcommission@lovelafayette.org

CC: planner@lovelafayette.org; msubramanian@bbklaw.com
nsrivatsa@lovelafayette.org; JRobbins@lovelafayette.org;
eisberg@ci.lafayette.ca.us

Dear Lafayette Planning Commission:

The California Housing Defense Fund ("CalHDF") submits this letter to remind the City of its obligation to abide by all relevant state housing laws when evaluating the proposed 90-unit housing development project at 1001, 1007, 1009, and unaddressed parcel Oak Hill Road, which includes five very low-income units and six moderate-income units. These laws include the Housing Accountability Act ("HAA"), the Density Bonus Law ("DBL"), and California Environmental Quality Act ("CEQA") guidelines. Additionally, the project is located on a site identified for housing development by the City's adopted Housing Element.

The HAA provides the project legal protections. It requires approval of zoning and general plan compliant housing development projects unless findings can be made regarding specific, objective, written health and safety hazards. (Gov. Code, § 65589.5, subd. (j).) The HAA also bars cities from imposing conditions on the approval of such projects that would reduce the project's density unless, again, such written findings are made. (*Ibid.*) As a development with at least two-thirds of its area devoted to residential uses, the project falls within the HAA's ambit, and it complies with local zoning code and the City's general plan. The City must therefore approve the project unless it makes written findings regarding health and safety as mentioned above – which it cannot do since the preponderance of the evidence in the record does not support such findings. (*Ibid.*) Increased density, concessions, and waivers that a project is entitled to under the DBL (Gov. Code, § 65915) do not render the project noncompliant with the zoning code or general plan, for purposes of the HAA (Gov. Code, § 65589.5, subd. (j)(3)).

The DBL offers the project certain benefits. (See Gov. Code, § 65915.) The City must respect these benefits. In addition to increased density, the City must grant the developer's requested concessions and waivers with respect to public art, parking design, setback, height, landscaping, upper story setback, building design, and circulation, unless it makes written findings as required by Government Code, section 65915, subdivision (e)(1) that the waivers would have a specific, adverse impact upon health or safety, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact, or as required by Government Code, section 65915, subdivision (d)(1) that the concessions would not result in identifiable and actual cost reductions, that the concessions would have a specific, adverse impact on public health or safety, or that the concessions are contrary to state or federal law. Of note, the DBL specifically allows for a reduction in required accessory parking in addition to the allowable waivers and concessions. (Gov. Code, § 65915, subd. (p).) Furthermore, the California Court of Appeal has ruled that when an applicant has requested one or more waivers and/or concessions pursuant to the DBL, the City "may not apply any development standard that would physically preclude construction of that project as designed, even if the building includes 'amenities' beyond the bare minimum of building components." (*Bankers Hill 150 v. City of San Diego* (2022) 74 Cal.App.5th 755, 775.)

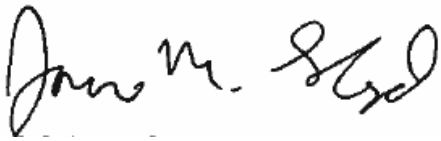
Finally, the project is exempt from state environmental review under the Class 32 CEQA categorical exemption (In-Fill Development Projects) pursuant to section 15332 of the CEQA Guidelines, as the project is consistent with the applicable general plan designation and all applicable general plan policies as well as the applicable zoning designation and regulations; the proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses; the project site has no value as habitat for endangered, rare, or threatened species; approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality; and the site can be adequately served by all required utilities and public services. And recent caselaw from the California Court of Appeal affirms that local governments err, and may be sued, when they improperly refuse to grant a project a CEQA exemption or streamlined CEQA review to which it is entitled. (*Hilltop Group, Inc. v. County of San Diego* (2024) 99 Cal.App.5th 890, 911.).

As you are well aware, California remains in the throes of a statewide crisis-level housing shortage. New housing such as this is a public benefit: it will provide badly needed multifamily housing options in the city; it will provide affordable homeownership opportunities; it will bring new customers to local businesses; and it will reduce displacement of existing residents into homelessness. While no one project will solve the statewide housing crisis, the proposed development is a step in the right direction. CalHDF urges the City to approve it, consistent with its obligations under state law.

CalHDF is a 501(c)(3) non-profit corporation whose mission includes advocating for increased access to housing for Californians at all income levels, including low-income households. You may learn more about CalHDF at www.calhdf.org.

Sincerely,

Dylan Casey
CalHDF Executive Director



James M. Lloyd
CalHDF Director of Planning and Investigations